

STATE OF MICHIGAN
COURT OF APPEALS

KAREN'S HELPING HANDS, INC.,

Petitioner-Appellee,

v

CITY OF RIVERVIEW,

Respondent-Appellant.

UNPUBLISHED

April 26, 2011

No. 295621

Tax Tribunal

LC No. 00-337638

Before: METER, P.J., and SAAD and WILDER, JJ.

PER CURIAM.

In this property tax dispute over the applicability of the charitable institutions exemption, respondent, the city of Riverview (the city), appeals the Michigan Tax Tribunal's decision that petitioner, Karen's Helping Hands, Inc. (KHH), is entitled to this exemption. For the reasons set forth below, we affirm.

The city argues that KHH is not entitled to the charitable institution exemption, MCL 211.7o(1), because it is not a charitable entity. Under the Michigan constitution, "[judicial] review [of agency decisions] shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record." Const 1963, art 6, § 28. Courts must accept the factual findings of the Tax Tribunal as final, as long as they are supported by competent, material, and substantial evidence. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631-632; 462 NW2d 325 (1990). Substantial evidence is more than a scintilla, but may be substantially less than a preponderance. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

MCL 211.7o(1) provides: "Real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under this act." Our courts apply the following definition to decide whether an entity is a charitable institution:

Charity . . . is a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life,

or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. [*Wexford Med Group v City of Cadillac*, 474 Mich 192, 203, 214; 713 NW2d 734 (2006) (internal brackets and citation omitted).]

A gift is “something given voluntarily without payment in return.” *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 241; 615 NW2d 241 (2000) (internal quotation marks and citation omitted).

Our Supreme Court enumerated “certain factors [that] come into play when determining whether an” entity is charitable, including:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity . . . ; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. [*Wexford Med Group*, 474 Mich at 215.]

The city does not challenge the competency or materiality of the evidence, but argues that substantial evidence did not support the Tax Tribunal’s finding that KHH is a charitable entity.

With respect to the first element, there is substantial evidence that KHH is a nonprofit institution. It was incorporated as such under Michigan law, and it is undisputed that it is exempt from federal taxes as a nonprofit entity.

To satisfy the second factor, the entity must be organized chiefly for charity. KHH’s articles of incorporation state that the corporation’s purpose is to operate an adult foster care facility. This purpose implies an intent to *benefit* persons needing adult foster care (i.e., persons who are unable, on their own, to care for themselves entirely). KHH asserts that, to benefit such persons is, in essence, to provide them with charity. Also, Karen Goreta testified that, if she did not assist residents with their copays, residents would choose to live on the streets. Keeping such residents from being homeless is a benefit to them, and paying their copays is charity, because it

is not required by any agreement. Accordingly, evidence supports a finding that KHH was organized chiefly for charity.

The third factor is whether KHH “offer[s] its charity on a discriminatory basis” *Wexford Med Group*, 474 Mich at 215. The Supreme Court stated that it is an “indispensable principle” that “the organization must offer its charitable deeds to benefit people who need the type of charity being offered. In a general sense, there can be no restrictions on those who are afforded the benefit of the institution’s charitable deeds.” *Id.* at 213. The Court continued:

This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, *a charitable institution can exist to serve a particular group or type of person, but the charitable institution cannot discriminate within that group.* The charitable institution’s reach and preclusions must be gauged in terms of the type and scope of charity it offers. [*Id.* (emphasis added).]

Evidence supported the Tax Tribunal’s finding that KHH is nondiscriminatory. The evidence shows that KHH does not discriminate against persons recommended by the managed care organization, Gateway Network, Inc. (Gateway).¹ The persons to whom it offers its charity is that group: persons recommended by Gateway. There is no evidence that KHH has ever turned away, for a discriminatory reason, any proposed resident recommended by Gateway.

The fourth factor is whether KHH relieves its clients’ bodies from suffering or constraint, assists them to establish themselves for life, or otherwise lessens the burdens of government. *Wexford Med Group*, 474 Mich at 215. This element is satisfied. Ms. Goreta testified in her affidavit that KHH has four homes where persons with developmental disabilities and mental illness live. She testified at the evidentiary hearing that Karen’s Helping Hands II (KHH II), the property located in Riverview, “provides services to the mentally ill and developmentally disabled,” and that “[m]ost are mentally ill.” To care for persons with developmental disabilities, and mental illness, is to help relieve them of suffering. There is also evidence to support the conclusion that KHH helps its residents to establish themselves for life. Ms. Goreta testified that the funds from Gateway are used for additional services including things like teaching residents how to prepare their meals in the home, and how to do laundry, and how to make their beds. As Ms. Goreta testified, the “goal [of KHH] is to get [residents] prepared for community so that they can go independent”

The fifth element required evidence that charges must not exceed what is needed to successfully maintain the institution. Evidence showed that KHH only charges its residents what they receive in government benefits. According to the testimony of one resident of KHH II, she

¹ KHH receives payments from Gateway for each resident for whom Gateway obtains placement in a KHH home. Gateway acts on behalf of the Michigan Department of Community Mental Health, or on behalf of Wayne County, to place persons who qualify for services, which include community living support and personal care.

receives \$495 a month from Social Security, but her contract with KHH II requires her to pay \$794 a month. When asked who makes up the difference, the resident testified “[Ms. Goreta] does,” and testified that Ms. Goreta has never billed her or asked her to repay her for the shortfall. This resident also testified that she qualified for Medicaid about three months before the hearing, but had lived at KHH II for a year, so for the first nine months living there, she had expenses for which Ms. Goreta paid, including medication, eyeglasses, dental care, a physical by a doctor, and feminine hygiene products.

The sixth factor, that the overall nature of the institution is charitable, need not meet a monetary threshold. *Wexford Med Group*, 474 Mich at 215. Here, the state license renewal inspection report describes the program carried out by KHH as being a broad one:

[The] licensee . . . provide[s] a home-like setting for mentally challenged adults in the least restrictive environment possible. This is intended to maximize the social and psychological growth of the consumers of the facility. The princip[le]s of normalization will be applied to recognize the uniqueness of each individual. Emphasis is placed on having residents participate in a program designed to meet their social developmental needs. . . .

Such broad purposes are significant when it is kept in mind that KHH only charges its residents, in rent, what they receive from Social Security. The residents served by KHH, with their developmental disabilities and mental illness, would not have a place to live were it not for the services provided by it. Again, as Ms. Goreta testified, if she refused to pay the residents’ copays, they would choose to live on the street. Overall, KHH is choosing to serve a population of people in a way that the state requires to meet challenging goals: the least restrictive environment possible; maximizing the social and psychological growth of the residents; and applying principles of normalization to residents who are disabled. KHH strives to meet the social development needs of persons who, because of mental illness or developmental disability, would have fairly challenging needs. Meeting the needs of persons who have no other source for such services is charitable.

Other evidence also shows that the entity is charitable. Mr. Goreta testified that she provides gifts to the residents of KHH II. If a resident has a job that causes the resident’s Social Security checks to be reduced, Ms. Goreta does not charge the resident for the amount of the reduction. Further, in 2006, one resident lived at KHH II for some time, without payment, in effect receiving gifted rent, and two such clients did the same in 2007. Moreover, residents who came from other group homes that owed money to their former group homes had the amounts owed deducted from their Social Security payments—money that would have been paid to KHH. In 2006 and 2007, KHH sustained losses because of these transferred residents.

KHH also takes its residents out to dinner once a month, buys clothing for them, takes them on a two-day trip each year, pays their medication copayments and dental care costs, and allows them to stay rent-free if they have not yet received approval from Social Security, or if

they have been denied approval. These expenditures can reasonably be characterized as gifts because they do not result in additional charges. *Sands Appliance Servs, Inc*, 463 Mich at 241.²

Because there is substantial evidence to establish that KHH is a charitable entity, the Tax Tribunal did not err in finding that it is exempt from property taxes.

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Kurtis T. Wilder

² We reject the city's argument that the Tax Tribunal should have followed an Attorney General opinion from 1987 that stated that adult foster care homes are not tax exempt. Importantly, we note that, regardless whether the Tax Tribunal was bound by the opinion, the opinion is not binding on this Court and we could, therefore, hold contrary to the opinion. *Danse Corp v City of Madison Hts*, 466 Mich 175, 182 n 6; 644 NW2d 721 (2002). Further, our Supreme Court has acknowledged that its decisions conflict on whether a state agency is bound by an Attorney General opinion:

[T]he extent to which a governmental agency is even bound by an opinion of the Attorney General is open to question. Compare *East Grand Rapids Sch Dist v Kent Co*, 415 Mich 381, 394; 330 NW2d 7 (1982) (a state agency is not bound by an Attorney General opinion that a statute is unconstitutional), and *Traverse City Sch Dist v Attorney General*, 384 Mich 390, 410, n 2; 185 NW2d 9 (1971) (an opinion of the Attorney General commands allegiance of state agencies). [*Danse Corp*, 466 Mich at 182 n 6.]

Moreover, the Attorney General opinion was issued before *Wexford Med Group*, which established the factors to be used whenever a charitable exemption is claimed. *Wexford Med Group*, 474 Mich at 215.